

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7256 OF 2005

Shri. Swami Vivekanand

Shikshan Sanstha. Petitioner.

vs.

Madhavrao Pandurang Shinde Respondent.

Mr. P.S. Dani for petitioner.

Mr. S.P. Kadam for respondent.

CORAM : S.U. KAMDAR, J.

DATE : 24th November, 2005.

P.C.:

. The present petition is filed challenging the order passed by the Civil Judge, Senior Division, Kolhapur and confirmed by the Appeal Court being District Judge, Kolhapur. By the impugned orders the trial Court as well as the Appeal Court have permitted the respondent to continue in service and restrained the petitioner from interfering with and/or obstructing the petitioner from carrying on his duties. The only issue before the Court was that whether the respondent was entitled to withdraw the application for voluntary retirement dated

27.8.2003 under the Voluntary Retirement Scheme. It is not disputed before me that the Voluntary Retirement Scheme provided that the application for voluntary retirement would come into effect after a period of three months from the date on which the notice is given by the respondent to retire from service. Admittedly, the respondent has by a letter dated 1.11.2003 has withdrawn from the said voluntary retirement scheme and has opted that he be permitted to continue his services. Thus, in the present case, there is no disruption of the master and servant relationship between the petitioner and the respondent. The only question is that having withdrawn from the voluntary retirement, the respondent should be permitted to continue his service or that the petitioner is entitled to obstruct the respondent and not permit the respondent to carry on his duties. The Division Bench of this Court in the case of Tulsiram Natthuji Salmakhe vs. General Manager, Maharashtra State Co-operative Agriculture and Rural Development Bank Ltd., Mumbai and another reported in 2004 (1) Mh. L.J. 481 has already held that it is open to an employee to withdraw from the offer of voluntary retirement before the expiry of the period stipulated in the notice and the employee cannot be made to forcibly retire even after his withdrawal from such voluntary retirement scheme.

2. The contention raised by the learned counsel for the petitioner that by the impugned order the Courts below have granted a specific performance of personal service either by reinstatement or permitting the respondent to continue his job is without any merit in as much as since there was no disruption of the contract of employment between the petitioner and the respondent, the question of there being reinstatement cannot and does not arise. In the light of the aforesaid fact, I do not find any infirmity in the orders passed by both, the trial Court and the Appeal Court, and, they are accordingly confirmed. The petition accordingly fails and the same is dismissed. No order as to costs.

3. If the issue of jurisdiction of the Court vice versa the School Tribunal is raised by the petitioner, then the same will be determined by the Court on its own merits and in accordance with law.